

<b>FARRIS AND JUDY BENTON,</b>	)	<b>AGBCA No. 99-152-1</b>
	)	
Appellant	)	
	)	
<b>Appearing for the Appellant:</b>	)	
	)	
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<b>Appearing for the Government:</b>	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

**February 15, 2000**

**Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge POLLACK.**

This appeal arises out of a lease between the U. S. Department of Agriculture, Farm Service Agency (FSA) of Tangent, Oregon, and Farris and Judy Benton of Burns, Oregon, for property to be constructed and to be used as offices in Tangent, Oregon. The Government had issued a solicitation for offers for a facility on March 9, 1995. Appellant submitted the successful offer on April 4, 1995, and the offer was accepted by the Government on June 13, 1995. Award, however, was not transmitted until August 11, 1995.

The solicitation contemplated the successful offeror constructing office space for the Government, in what is agreed to be a relatively lightly populated area of Oregon. Thereafter, Appellant began construction of the building. There were a number of delays to the planned occupancy date. On or

about December 18, 1996, the Government moved into the building and occupied the space. In early February 1997, the Government formally executed the lease instrument. The lease does not appear to have a contract number. The lease was for a term of 5 years with a renewal option of another 5 years. It called for leasing space to several Department of Agriculture agencies, all, however, under the same lease. The lease contained a clause allowing the FSA to terminate the contract with 120 days notice.

The Board has jurisdiction under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended.

Relatively soon after the occupancy and signing of the lease, the Government notified Appellant that a portion of the lease space would not be needed. More specifically the Government deleted 916 square feet from the contract. The Government continued to occupy the remaining space. Appellant contended that the reduction was wrongful, arguing that the Government knew before the lease was signed of the intention to downsize and take less space and that the decision to reduce the space was arbitrary and did not follow proper procedures. The Government defended, asserting that it did not know prior to the contract that it would not need the space, its actions were not arbitrary and finally pointing out that the contract (under the 120-day clause) gave the Government the right to end the contract without conditions. There was also an issue of whether the Government had given the full 120 days notice and thus an issue over establishing the date for the end of the lease period.

The Contracting Officer (CO) issued a final decision on December 28, 1998, where he denied the claim. By letter of March 26, 1999, Appellant filed an appeal to the decision claiming \$66,925.31 which represented 54 months of rent for the space which had been deleted.

The appeal was docketed on April 6, 1999. Thereafter, pleadings were filed and the record was supplemented. The Appellant requested a hearing. On October 5, 1999, the Government filed a Motion for Summary Judgment requesting that the Board deny the appeal. The Appellant responded arguing that the motion should be denied on the basis of the law, and on the basis that there were material facts in dispute.

On November 8, 1999, the Board held a telephone conference at the request of the parties. The conference explored the possibility of the Board engaging in some form of Alternative Dispute Resolution (ADR) to expedite settlement. One of the possibilities discussed was early neutral evaluation. The parties requested a face-to-face proceeding, believing that would be the most likely way to succeed. Accordingly, the Board scheduled ADR for December 16, 1999. On that date the Board conducted mediation/evaluation. The parties agreed to a settlement.

By letter of January 21, 2000, the Board was provided the parties' Settlement Agreement. Under that agreement the parties agreed that the appeal should be dismissed with prejudice.

**DISCUSSION**

The parties have entered into a Settlement Agreement whereby they have requested that the appeal be dismissed with prejudice.

**DECISION**

The appeal is dismissed with prejudice.

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**HOWARD A. POLLACK**  
Administrative Judge

**Concurring:**

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**EDWARD HOURY**  
Administrative Judge

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**ANNE W. WESTBROOK**  
Administrative Judge

**Issued at Washington, D. C.  
February 15, 2000.**